REMARKS

Claims 1-52 are pending in the Application and all are rejected in the Office action of September 8, 2008. Claim 29 is amended by the present response. Claims 1, 6, 28, and 49 are independent claims, while claims 2-5, 7-27, 29-48, and 50-52 depend either directly or indirectly from independent claims 1, 6, 28, and 49, respectively.

The Applicant respectfully requests reconsideration of claims 1-52, in light of the following remarks.

Rejection of Claims Under 35 U.S.C. §112

Claims 25, 26, 46, and 47 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The Office Action stated, at page 4:

> Claim 25, 26 and 46 recite at least one processor comprises a plurality of processor. However, it is not clear how the "one processor" can comprise a plurality of processors. For the purpose of compact prosecution, the Examiner reads it as -one device comprise a plurality of processors---."

Claims 25, 26, and 46 were rejected because they "recite at least one processor comprises a plurality of processor." Claim 47 was rejected because it depends from rejected claim 46. The Office Action again asserts that "it is not clear how the 'one processor' can comprise a plurality of processors." Applicant respectfully traverses this rejection. As stated in Applicant's response of June 3, 2008, the claims do not recite that just one processor comprises a plurality of processors, but instead recite that "the at least one processor comprises a plurality of processors." Thus, for example, claim 25 does not recite one processor comprising a plurality of processors, but rather recites that at least one processor (i.e. one or more) comprises a plurality of processors (i.e.

more than one). Applicant respectfully submits that it would be immediately and unquestioningly recognized by one of ordinary skill in the relevant art that "more than one processor" qualifies as "one or more processors." Applicant therefore respectfully maintains that the language of claims 25, 26, and 46 is not indefinite, but is clear and definite. Further, because claim 47 was rejected as being dependent on claim 46, Applicant respectfully submits that claim 47 is not indefinite for the same reasons.

Rejection of Claims Under 35 U.S.C. §103(a)

Claims 1-24 and 32 were rejected under 35 U.S.C. §102(a) as being anticipated by Patrick J. O'Neil, WO 02/41147 A1 (hereinafter "O'Neil") in view of James S. Woodward (US 6,148,441, hereinafter "Woodward"). Applicant respectfully traverses the rejection.

Applicant respectfully submits that claim 1 recites, in part, "…selecting at least one of the plurality of memory devices to be updated using the update information;…" Applicant respectfully submits that the cited art does not teach or suggest at least this feature of Applicant's claim 1.

The Office states, at page 5, that "O'Neil discloses a method of updating non-volatile memory in an electronic device via a communication network, the non-volatile memory comprising a plurality of memory devices comprising a first memory device having a first associated type and a second memory device having a second associated type, wherein the first associated type and second associated type are not same (see for example, Fig.8A, 813, "non-volatile memory" and related text; also see , p.40, first paragraph about type of non-volatile memory/storage area : flash memory, disk drive, optical drive...the method comprising: … selecting at least one of plurality of memory devices to be updated using the update information (see for example, p.15, second paragraph, "Upon recognition of one or more client devices 104a, 104b, 104c, the update server array 122 may transfer the server manifest to the one ore more client devices...");…." Applicant respectfully notes that the Office cites only O'Neill in its

rejection of this aspect of Applicant's claim 1. Applicant first addresses the alleged

teaching of O'Neill at the first paragraph of page 40, which states:

> While the non-volatile memory or storage area is illustrated as having separate code and data sections, it will be appreciated that the update methods presented herein can readily be adapted to other memory or storage configurations. For example, the non-volatile storage area 1002 may comprise a hardware storage device such as a disk drive, optical drive, or other device implementation which may be used to store information in a non-volatile manner. Additionally, in the case of the non-volatile memory storage area, the memory configuration need not be logically subdivided into separate code and data sections in order to be used with the update management system and methods. It is conceived that the aforementioned memory or storage area configuration represents but one embodiment of an architecture that may be adapted for use with the present invention and other memory or storage areas architectures and configurations can readily be adapted in a similar manner by one of skill in the art.

Although the cited portion of O'Neill appears to teach that 'non-volatile memory

or storage area 1002" may comprise a disk drive, optical drive, or other device

implementation, and that the memory configuration need not be logically subdivided into

separate code and data sections, the cited portion of O'Neill does not, however, teach

or suggest the use of a "plurality of memory devices" in any one embodiment of O'Neill,

and doesn't teach or suggest that a "plurality of memory devices" of different types are

used in any one embodiment of O'Neill. Further, there is no explicit or implicit teaching

of "selecting", because the cited portion of O'Neill fails to teach any one embodiment

having more than one memory device ("a plurality of memory devices"). There can be

no teaching or suggestion of "selecting" a memory device, since there is only one. The

word "select" may be defined as "To choose from among several; take in preference;

pick out." *See* The American Heritage Dictionary of the English Language, ©1979,

Houghton Mifflin Company, page 1176. Therefore, "selecting" may be defined as

"choosing from among several."

The Office responds to the Applicant's arguments in this regard filed June 3, 2008, as follows:

> At pages 17-19, the Applicants pointed out that cited portion of Woodward, alone or in combination with O'Neil, does not teach, suggest or otherwise render obvious the method. However, the Examiner's position is that Woodward disclosed a method to detect/determine the memory types (see for example, col.8, lines 16-41, "determine whether the flash ROM... is an INTEL device or an AMD flash ROM..."), it is obvious that said method can be used by O'Neil at Fig.213, to determine and select memory type during the step (262) to allocate memory on client for update (270). Therefore, O'Neil and Woodward's disclosure renders obvious the method as recited in claim 1.

The Office states, in part, "... it is obvious that said method can be used by O'Neil at Fig.213, to determine and select memory type during the step (262) to allocate memory on client for update (270)." Applicant respectfully disagrees, in that neither O'Neill nor Woodward teach more than one memory device, as shown above, and at pages 17-21 of Applicant's response of June 3, 2008. As demonstrated above, to "select", one must have several of an item to select from. Neither O'Neill nor Woodward teach a "plurality of memory devices", and thus there is no selection. Further, Applicant has previously shown that Woodward teaches away from the use of more than one memory device in a single system. *See* Applicant's response filed June 3, 2008 at page 17. Further, a *prima facie* case of obviousness is not supported by mere conclusory statements by the Office such as "...it is obvious that said method can be used by O'Neil at Fig.213, to determine and select memory type during the step (262) to allocate memory on client for update (270)." *See* M.P.E.P. §2142. With regard to "step 262" of O'Neill, Applicant respectfully submits that the mere teaching by O'Neill at page 24, lines 5-7, that "...the client device 104 may further determine, in a state 262, from the update information query whether or not the client device 104 has enough memory available to store the update package 110..." does not teach or suggest the determination of "memory type", the selection of "memory type", or a "plurality of

memory devices", as suggested by the Office Indeed, since the cited teachings of O'Neill fail to disclose that any one embodiment of O'Neill has more than one type of memory, Applicant respectfully submits that O'Neill does not even recognize the need or usefulness of knowing or determining "memory type" or of "selecting" one of "a plurality of memory devices."

Also with respect to claim 1, the Office further responds to Applicant's arguments of June 3, 2008 as follows:

> At page 20, second paragraph, the Applicants submit that Woodward does not disclose selecting from among deferent memory devices in an electronic device... Woodward disclosed determining which flash is "used in the PC, system,' and not using different types in a system, let alone selecting Form [sic] among different types. It should be noted that the claim language "selecting at least one of the plurality of memory devices .... [emphasis added]", does not require selecting more than one memory. Therefore, using Woodward's method by determining the memory type for the update in O'Neil renders obvious of claim 1.

Applicant respectfully notes that the Office argues that "…. It should be noted that the claim language "selecting at least one of the plurality of memory devices .... [emphasis added]", does not require selecting more than one memory. Therefore, using Woodward's method by determining the memory type for the update in O'Neil renders obvious of claim 1." Applicant respectfully submits that the Office has misinterpreted the argument and the language of the claim. Applicant agrees that "selecting at least one of the plurality of memory devices" does not require selecting more than one. However, "selecting" does require having a plurality of an item, or else "selecting" is not possible. See the definition of "select"/"selecting" above. Further, the Office is ignoring the fact that neither O'Neill nor Woodward teach or suggest the use of more than one memory device in a system.

Therefore, Applicant respectfully submits that the cited portion of O'Neill does not teach or suggest "…selecting at least one of the plurality of memory devices [comprising a first memory device having a first associated type and second memory device having

a second associated type, wherein the first associated type and second associated type are not the same] to be updated using the update information;…", as recited by Applicant's claim 1. Applicant respectfully submits, therefore, that cited paragraph one of page 40 of O'Neill does not teach or suggest at least this aspect of Applicant's claim 1.

The Applicant now turns to the cited second paragraph of page 15 of O'Neill, which states:

> Alternatively, the update server array 122 may create a server manifest comprising a list of archived update packages 110a, 110b, 110c including operational software version information, which pertain to a wide range of particular client devices 104a, 104b, 104c depending on the identity, make, and model of the client devices 104a, 104b, 104c. Upon recognition of one or more client devices 104a, 104b, 104c, the update server array 122 may transfer the server manifest to the one or more client devices 104a, 104b, 104c. The one or more client devices 104a, 104b, 104c then review the manifest and submit a request for the update package 110a, 110b, 110c to be transferred from the update server array 122 to the one or more client devices 104a, 104b, 104c making the request.

The portion of O'Neill shown above teaches that an "update server array 122" may create a "server manifest" that is a list of "update packages" for a wide range of "client devices 104a, 104b, 104c". The "server manifest" may then be transferred to the "client devices 104a, 104b, 104c", and "client devices 104a, 104b, 104c" may then review the manifest and submit a request for the "update package" to be transferred from the "update server array 122" to the "client devices 104a, 104b, 104c" making the request. Applicant respectfully submits that this cited portion of O'Neill does not, however, teach that a "client device" is equivalent to a "<u>memory</u> device" in accordance with Applicant's claim 1, or that any one embodiment of O'Neill has a "plurality of <u>memory</u> devices" in accordance with Applicant's claim 1. Again, because this cited portion of O'Neill also fails to teach any one embodiment having more than one memory device ("a plurality of memory devices"), there can be no teaching or suggestion of

"selecting" a memory device, since there is only one. For at least these reasons, Applicant respectfully submits that this cited portion of O'Neill also does not teach or suggest "...selecting at least one of the plurality of memory devices [comprising a first memory device having a first associated type and second memory device having a second associated type, wherein the first associated type and second associated type are not the same] to be updated using the update information;...", as recited by Applicant's claim 1. Therefore, paragraph two of page 15 of O'Neill also does not teach or suggest at least this aspect of Applicant's claim 1. Applicant respectfully submits that, as noted above, the Office fails to show where Woodward remedies these shortcomings of O'Neill. Therefore, Applicant respectfully submits that the proposed combination of O'Neill and Woodward does not teach or suggest at least this feature of Applicant's claim 1.

Applicant respectfully submits that Applicant's claim 1 also recites, in part, "...identifying updating software corresponding to at least the associated type of the at least one of the plurality of memory devices;...." Applicant respectfully submits that the cited art does not teach or suggest at least this feature of Applicant's claim 1.

The Office states, at page 5, that O'Neill discloses "...identifying updating software corresponding to at least the associated type of the at least one client device to be updated (see for example, p.15, The one or more client devices 104a, 104b, 104c then review the manifest and submit a request for the update package);...." Applicant respectfully notes that the Office again cites <u>only</u> O'Neill in its rejection of this aspect of Applicant's claim 1.

In addition, Applicant respectfully notes that claim 1 recites ""...identifying updating software corresponding to at least the associated type of the at least one of the plurality of <u>memory</u> devices;...", **which is different from the alleged teachings of O'Neill** stated by the Office as "...identifying updating software corresponding to at least the associated type of the at least one <u>client</u> device to be updated...." For at least this reason alone, Applicant respectfully submits that the Office has not established a *prima facie* case of obviousness in accordance with M.P.E.P. §2142, which states in part,

"[t]he key to supporting any rejection under 35 U.S.C. 103 is the <u>clear articulation</u> of the reason(s) why the claimed invention would have been obvious." (emphasis added) Applicant respectfully submits that this error in misinterpretation/misstatement of Applicant's claim language is failure to clearly articulate the reasons the claimed invention would have been obvious.

Applicant again addresses the alleged teaching of O'Neill at page 15. Although the Office did not specifically identify the location of the cited text, the portion quoted by the Office appears to be contained in the second paragraph of page 15 of O'Neill, reproduced above. The Office asserts that the text from O'Neill, namely, "[t]he one or more client devices 104a, 104b, 104c then review the manifest and submit a request for the update package..." teaches Applicant's feature "...identifying updating software corresponding to at least the associated type of the at least one client device to be updated...." Applicant's respectfully disagree. Applicant's claim recites "identifying updating <u>software</u>" and "updating <u>information</u>" as separate and distinct elements. The cited portion of O'Neill recites "review[ing] the <u>manifest</u> and submit[ting] a request for the <u>update package</u>." (emphasis added) The Office has identified "update information" as being taught by 'Fig. 1B, item 110a-110c, "update package", "server manifest" and related text' of O'Neill. *See id.* at page 5. O'Neill teaches, at lines 12-14 of page 12, that a "manifest" comprises "...a list of archived <u>update packages</u> 110 including operational software version information for a wide range of particular client devices 104." Applicant therefore respectfully submits that Applicant's claim recites the identification of <u>software</u> corresponding to type of "memory device", while the cited portion of O'Neill teaches the identification of an "update package" to be used in updating a type of "client device". Applicant respectfully submits that the "update package"/"server manifest" of O'Neill, which is identified by the Office as teaching Applicant's "update information", is different from and does not teach or suggest "updating <u>software</u>" in accordance with Applicant's claim 1. Therefore, Applicant respectfully submits that the cited portion of O'Neill does not teach or suggest at least this aspect of Applicant's claim 1. Further, because the Office fails to identify any teaching from Woodward that remedies the demonstrated deficiencies of O'Neill, Applicant respectfully submits that the Office has failed to show

where the O'Neill and Woodward references, taken alone or in combination, teach or suggest at least Applicant's claimed feature "...identifying updating software corresponding to at least the associated type of the at least one of the plurality of memory devices;...", as recited by claim 1.

With regard to claim 5, Applicant respectfully submits that the Office states "...O'Neil also discloses the method according to claim 1, further comprising verifying the updating of the one of the at least one memory device using one of a CRC, a checksum, a hash code, and a digital signature (see for example, p.51, second paragraph "These validation checks may include determining a cyclic redundancy check code (CRC)" and related text)." (emphasis added) Applicant respectfully notes that the Office cites only O'Neill as teaching the subject matter of claim 5. The second paragraph of page 51 of O'Neill states:

> As shown in state 1210, the bank-by-bank update process 1100 typically begins after the appropriate available update package 110 is identified and transferred to the electronic device using the functionality of the aforementioned download agent 1020. The update package 110 is received and temporarily stored in a section 1222 of the volatile memory or storage area 1004 and a series of validation checks are implemented to insure that the package 110 is complete and free of errors. These validation checks may include determining a cyclic redundancy check code (CRC) for the received update package 110 and comparing this code against an expected CRC value stored in the update package 110. Furthermore, a validation check may be performed by identifying the size of the update package 110 and comparing this value against the expected size determined by the download agent 1020.

Applicant respectfully submits that the cited portion of O'Neill shown above teaches the "validation" of a received "update package" to insure that "...the package 110 is complete and free of errors." This cited portion of O'Neill does not, however, teach or suggest "...verifying the updating of the one of the at least one memory device using one of a CRC (Cyclic Redundancy Check), a checksum, a hash code, and a digital signature...", as recited by Applicant's claim 5. Applicant respectfully submits

that O'Neill teaches that the "validation" takes place as a separate activity from the "updating", and is different from and does not teach "...verifying the updating of the [selected] one of the at least one memory device...", as recited by claim 5. Therefore, Applicant respectfully submits that claim 5 is allowable over the cited reference, for at least this reason.

Based at least upon the above, Applicant respectfully submits that the Office has failed to establish a *prima facie* case of obviousness, in accordance with M.P.E.P. §2142, and that the proposed combination of O'Neill and Woodward does not render at least claims 1 and 5 unpatentable. Because claims 2-5 depend from independent claim 1, Applicant respectfully submits that the proposed combination of O'Neill and Woodward also does not render claims 2-5 unpatentable, for at least the reasons set forth above. Accordingly, Applicant respectfully requests that the rejection of claims 1-5 under 35 U.S.C. §103(a) be reconsidered and withdrawn.

With regard to independent claim 6, Applicant respectfully submits that claim 6 recites features in common with those of independent claim 1, and that Applicant has shown that the proposed combination of O'Neill and Woodward do not teach or suggest those features. Therefore, Applicant respectfully submits that independent claim 6, and any claims that depend therefrom, are allowable over O'Neill and Thompson, for at least the reasons set forth above with respect to claim 1.

With regard to dependent claim 9, which recites in part, "...determining which of the plurality of FLASH memory chips correspond to a particular FLASH memory modification;...", the Office asserts that O'Neill discloses "...determining which of the plurality of FLASH memory chips correspond to a particular FLASH memory modification (see for example, Fig. 10, steps 1210-1280 and related text; also see p.48, "The code transformation is managed by the update agent 1025");...." *See* Office action at page 10. Applicant respectfully submits that the rejection lacks specificity, asserting that the alleged teachings appear somewhere in Fig. 10, or the <u>four</u> pages of O'Neill

(page 51-54) that describe steps 1210-1280 of Fig. 10, or <u>somewhere</u> on page 48. Applicant also notes that the Office cites <u>only</u> O'Neill as teaching the features of claim 9.

Applicant respectfully submits that providing such vague citations require the Applicant to read the mind of the Examiner, identify the specifically relevant teachings, and then argue over the vaguely identified portions of the reference. Applicant respectfully submits that such rejections do not establish a *prima facie* case of obviousness, in that they do not provide "explicit analysis" and do not set forth a "...clear articulation of the reason(s) why the claimed invention would have been obvious...", as required by M.P.E.P. §2142.

Applicant has reviewed Fig. 10 and pages 48 and 51-54, and has been unable to find where O'Neill teaches anything about "a plurality of FLASH chips", or with regard to "determining <u>which</u> of the plurality of FLASH memory chips correspond to a particular FLASH memory modification...", as recited by Applicant's claim 9. Applicant respectfully submits that the cited portions of O'Neill do not teach at least these aspects of Applicant's claim 9, and that the Office has failed to specifically identify teachings, or to explain how such portions of O'Neill are to be interpreted to teach these aspects of Applicant's claim 9. Therefore, Applicant respectfully submits that the Office has failed to set forth a "...clear articulation of the reason(s) why the claimed invention would have been obvious..." which M.P.E.P. §2142 recognizes is "...[t]he key to supporting any rejection under 35 U.S.C. 103...." For at least these reasons, Applicant respectfully submits that the Office has failed to show that the cited references teach or suggest Applicant's claim 9, that a *prima facie* case of obviousness in accordance with M.P.E.. §2142 has not been established, and that claim 9 is allowable over O'Neill and Woodward.

With regard to claim 10, Applicant respectfully submits that claim 10 recites, in part, "...invoking appropriate functions stored in the memory library corresponding to the different manufacturers FLASH memory chips." The Office states that O'Neill discloses "...invoking appropriate functions stored in the memory library corresponding to the different manufacturers [*sic*] FLASH memory chips (see for example, p.48, "The code

transformation is managed by the update agent 1025 which processes the instructions of the instruction set or update package 110")." *See* Office action at page 11. Applicant respectfully notes that the Office cites <u>only</u> O'Neill in rejecting the above feature of claim 10, and respectfully submits that neither O'Neill, nor Woodward disclose a "...plurality of memory devices to be updated using the update information...", as recited by claim 1, from which claim 10 depends. Further, Applicant respectfully submits that the vaguely cited portion of O'Neill (i.e., "page 48") fails to teach or suggest that an "update package" comprises a "memory library" that contains "... functions ... corresponding to the different manufacturers FLASH memory chips...", in accordance with claim 10. Indeed, nothing on page 48 of O'Neill teaches anything regarding manufacturers of FLASH memory chips, and the Office fails to provide any explanation or interpretation of how and why the identified text that states "...[t]he code transformation is managed by the update agent 1025 which processes the instructions of the instruction set or update package 110..." teaches the features of claim 10. Thus, Applicant respectfully submits that, for at least these reasons, the proposed combination of references fails to render Applicant's claim 10 unpatentable.

With regard to claim 32, the Office states, at page 17:

> Claim 32 is a network/system version for performing the claimed method as in claim 10 addressed above, wherein all claimed limitation functions have been addressed and/or set forth above and certainly a computer system would need to run and/or practice such function steps disclosed by reference above. Thus, it also would have been obvious.

Applicant respectfully submit that the Office has rejected claim 32 for the same reasons set forth for the rejection of claim 10, and fails to identify any additional basis or teachings in either O'Neill or Woodward other than those set forth in the rejection of claim 10. Applicant has shown above that the proposed combination of O'Neill and Woodward fails to render claim 10 unpatentable. Therefore, Applicant respectfully

submits that proposed combination of O'Neill and Woodward fails to render claim 32 unpatentable, as well, for at least the same reasons.

Based at least upon the above, Applicant respectfully submits that the Office has failed to establish a *prima facie* case of obviousness, in accordance with M.P.E.P. §2142, and that the proposed combination of O'Neill and Woodward does not render claim 6, or any claims that depend therefrom, unpatentable. Because claims 7-27 depend from independent claim 6, Applicant respectfully submits that the proposed combination of O'Neill and Woodward also does not render claims 7-27 unpatentable, for at least the reasons set forth above. Further, claims 9, 10, and 32 have been shown to be independently allowable. Accordingly, Applicant respectfully requests that the rejection of claims 1-24 and 32 under 35 U.S.C. §103(a) be reconsidered and withdrawn.

Claims 28-31 and 33-45 were rejected under 35 U.S.C. §103(a) as being unpatentable over O'Neill. Applicant respectfully traverses the rejection. The Office states, at page 23:

> Claims 28-31 and 33-45 are network/system version for performing the claimed method as in claims 6-9 and 11-24 addressed above, wherein all claimed limitation functions have been addressed and/or set forth above and certainly a computer system would need to run and/or practice such function steps disclosed by reference above. Thus, they also would have been obvious.

Applicant respectfully submit that the Office has rejected claims 28-31 and 33-45 for the same reasons set forth for the rejection of claim 6-9 and 11-24, and fails to identify any additional basis or supporting teachings for the instant rejection beyond those set forth in the rejection of claim 6-9 and 11-24. Applicant has shown above that O'Neill in combination with Woodward fails to render claims 1-24 unpatentable. Therefore, it necessarily follows that O'Neill standing alone also fails to render claims 1-24 unpatentable, and that O'Neill fails to render claims 28-31 and 33-45 unpatentable,

as well, for at least the reasons set forth above. Accordingly, Applicant respectfully requests that the rejection of claims 28-31 and 33-45 under 35 U.S.C. §103(a) be reconsidered and withdrawn.

Claims 25-27, 46-49, 51, and 52 were rejected under 35 U.S.C. §103(a) as being unpatentable over O'Neill in view of Gove et al. (US 5,471,592, hereinafter "Gove"). Applicant respectfully traverses the rejection.

With regard to claims 25-27 and 46-48, Applicant respectfully submits that claims 25-27 depend from claim 6, and that claims 46-48 depend from claim 28. Applicant believes that claims 6 and 28 are allowable over O'Neill and Gove, in that Gove fails to overcome the deficiencies of O'Neill, set forth above. Because claims 6 and 28 are allowable over the proposed combination of references, Applicant respectfully submits that claims 25-27 and 46-48 that depend therefrom are also allowable, for at least the same reasons.

With regard to claim 49, Applicant respectfully submits that claim 49 recites, in part, "…a plurality of flash memory chips comprising a first flash memory chip having a first associated type and a second flash memory chip having a second associated type, wherein the first associated type and second associated type are not the same;…." Applicant respectfully submits that the Office admits that O'Neill does not disclose "…the flash memory comprises a plurality of flash memory chips." *See* Office action at page 20. The Applicant respectfully notes that this admission is inconsistent with the arguments set forth by the Office in the rejection of claim 1. The Office then turns to Gove, and states that Gove discloses "…a plurality of memory units (chips) (see for example, Fig. 1, M0-Mj and related text)." Applicant respectfully submits that the Office once again leaves it to the Applicant to read the mind of the Examiner to determine what is relevant or related, asking the Applicant to effectively make the *prima facie* case for the Examiner, and then respond to it. This lack of specificity in the rejection cannot support an obviousness rejection, for at least the reasons set forth above.

In addition, the Office has failed to address all of the features of Applicant's claim 49, which recites:

> A mobile handset comprising:
>
> a plurality of flash memory chips **comprising a first flash memory chip having a first associated type and a second flash memory chip having a second associated type, wherein the first associated type and second associated type are not the same**; and
>
> an update agent capable of updating at least one of firmware and software resident in at least one of the plurality of flash memory chips.

The Office has not shown where the proposed combination of O'Neill and Gove teaches the features of Applicant's claim 49 shown in bold, above. If fact, the Office fails to even address these aspects of Applicant's claim 49. For at least this reason, Applicant respectfully submits that grounds set forth by the Office do not meet the mandate that "...the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit...", as set forth in M.P.E.P. §2142, and that the Office has not shown where O'Neill and Gove, taken alone or together, render the whole of Applicant's claim 49 unpatentable. Applicant respectfully submits that the rejection offers does not provide any explanation or interpretation of how Gove is combined with O'Neill to render Applicant's claim feature and, therefore, does not establish a *prima facie* case of obviousness, in that it does not set forth a ""clear articulation of the reason(s) why the claimed invention would have been obvious..." which M.P.E.P. §2142 recognizes is "...[t]he key to supporting any rejection under 35 U.S.C. 103...." Instead, the Office provides only a conclusory statement that "... it would have been obvious to one having ordinary skill in the art at the time the invention was made to use Gove's memory configuration to access different memory space independently and concurrently. One would have been motivated to do so to concurrently access and process memory information as suggested by Gove (see for example, col.2, lines 5-9)." M.P.E.P. §2142 makes it clear that "...'rejections on obviousness cannot be sustained with mere

conclusory statements; instead, there <u>must</u> be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." (emphasis added)

Based at least upon the above, Applicant respectfully submits that the Office has failed to establish a *prima facie* case of obviousness, as required by M.P.E.P. §2142, and that the proposed combination of O'Neill and Gove does not render Applicant's claim 49 unpatentable. Because claims 50-52 depend from allowable claim 49, Applicant respectfully submits that claims 50-52 are also allowable, for at least the same reasons.

Therefore, for at least the reasons set forth above, Applicant respectfully requests that the rejection of claims 25-27, 46-49, 51, and 52 under 35 U.S.C. §103(a) be reconsidered and withdrawn.

Claim 50 was rejected under 35 U.S.C. §103(a) as being unpatentable over O'Neill in view of Gove, and further in view of Woodward. Applicant respectfully traverses the rejection. Applicant respectfully submits that claim 50 depends from independent claim 49, which Applicant has shown is allowable over O'Neill and Gove. Applicant respectfully submits that claim 49 is also allowable over the proposed combination of references, in that Woodward fails to remedy the deficiencies of O'Neill and Gove, set forth above. Because claim 49 is allowable over O'Neill, Gove, and Woodward, Applicant respectfully submits that claim 50, that depends from claim 49, is also allowable for at least the same reasons. Accordingly, Applicant respectfully requests that the rejection of claim 50 under 35 U.S.C. §103(a) be reconsidered and withdrawn.

Conclusion

In general, the Office Action makes various statements regarding the claims and the cited references that are now moot in light of the above. Thus, Applicant will not address such statements at the present time. However, the Applicant expressly reserves the right to challenge such statements in the future should the need arise (e.g.,

if such statements should become relevant by appearing in a rejection of any current or future claim).

The Applicant believes that all of claims 1-52 are in condition for allowance. Should the Examiner disagree or have any questions regarding this submission, the Applicant invites the Examiner to contact the undersigned at (312) 775-8000 for an interview.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

Date: _____December 3, 2008___   _____/Kevin E. Borg/_____
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